

Berguis, Warden v. Smith

--- U.S. --- (2010)

Decided March 30, 2010

FACTS: Smith was tried for a murder in Grand Rapids, Michigan. Jury selection (voir dire) took place in September, 1993 and included a panel of up to 100 individuals. Only three, however, were African-American. Smith objected unsuccessfully at that time to the composition of the venire panel. However, his case proceeded to trial and he was convicted of second-degree murder.

Smith appealed. The Michigan appellate court ordered the trial court to “conduct an evidentiary hearing on Smith’s fair-cross-section claim.” Smith’s evidence showed that Grand Rapids had approximately an 85% population of African-American. Evidence was presented as to how potential jury members were selected and notified. Specifically, the district court misdemeanor panels were filled first, and remaining potential jurors were made available for felony trial juries. Following Smith’s trial, the court administrator reversed the process, as he believed that the district court “essentially swallowed up most of the minority jurors” - leaving the Circuit (felony) Court with a jury pool that was not representative of the entire county. The trial court considered the ways the measurements of underrepresentation could be done, and the resulting statistics convinced the trial court that “African-Americans were underrepresented in Circuit Court venires. The trial court, however, found that Smith did not successfully prove that the process itself “had systematically excluded African-Americans.” Upon further action, the Court of Appeals, however, reversed the trial court decision and ordered a new trial, with jurors selected in the way implemented after Smith’s first trial. The prosecution appealed, and the Michigan Supreme Court reversed the Court of Appeals decision, finding that Smith had not met his burden of establishing a “prima facie violation of the Sixth Amendment fair-cross-section requirement.”

Smith then filed for habeas relief in the U.S. District Court, reasserting his claim. The District Court dismissed that claim, and he then appealed the Sixth Circuit. The Sixth Circuit found that the “juror-assignment order in effect when Smith’s jury was empaneled significantly reduced the number of African-Americans available for Circuit Court venires.” In addition, the Sixth Circuit found that Michigan’s high court “ had unreasonably applied Duren v. Missouri¹ when it declared that social and economic factors could not establish systematic exclusion.” As a result, Michigan petitioned for certiorari, which was granted.

ISSUE: May statistical underrepresentation of a minority in a jury pool result in challenge to the ultimate verdict?

HOLDING: Yes (but see discussion)

¹ 439 U. S. 357 (1979)

DISCUSSION: The state argued that there was no “systematic exclusion of African Americans from juries in Kent County, Michigan.”

The Court reviewed its prior decisions, particularly Duren, and noted that “a defendant must prove that: (1) a group qualifying as ‘distinctive’ (2) is not fairly and reasonably represented in jury venires, and (3) ‘systematic exclusion’ in the jury-selection process accounts for the underrepresentation.”

The Court began by stating:

Each test is imperfect. Absolute disparity and comparative disparity measurements, courts have recognized, can be misleading when, as here, “members of the distinctive group comp[ose] [only] a small percentage of those eligible for jury service.

The Michigan Court had concluded that since no single method was in itself appropriate, it was necessary to consider the results of all three possible ways to look at the evidence. The Sixth Circuit, in contrast, had declared that only the “comparative disparity test” is appropriate to “measure underrepresentation.”

The Court continued:

Evidence that African-Americans were underrepresented on the Circuit Court’s venires in significantly higher percentages than on the Grand Rapids District Court’s could have indicated that the assignment order made a critical difference. But, as the Michigan Supreme Court noted, Smith adduced no evidence to that effect.

Smith made no effort to compare, for example, how the representation in Kent County differed for the federal court jury venires for the same area. “Smith’s best evidence of systematic exclusion was offered by his statistics expert, who reported a decline in comparative underrepresentation, from 18 to 15.1%, after Kent County reversed the assignment order.” That evidence was not such a “big change” such as sufficient to support Smith’s claim that the prior method had resulted in the underrepresentation.

Smith provided to the Court a “laundry list” of practices that contributed to the underrepresentation, including “the County’s practice of excusing people who merely alleged hardship or simply failed to show up for jury service, its reliance on mail notices, its failure to follow up on nonresponses, its use of residential addresses at least 15 months old, and the refusal of Kent County police to enforce court orders for the appearance of prospective jurors.” The Court, however, found no precedent to support that simply “pointing to a host of factors that, individually or in combination, *might* contribute to a group’s underrepresentation.”

The Court concluded that the Michigan Supreme Court decision was correct and rejected Smith's claim. The case was then remanded to Michigan for further proceedings.

FULL TEXT OF OPINION: <http://www.supremecourt.gov/opinions/09pdf/08-1402.pdf>